



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.859 of 2011

R.Anandabagavathy

... Petitioner/Appellant

-vs-

1.The Principal Secretary
P.W.D.Secretariat, Chennai-9

2.The Engineer in Chief
(Water Resources Organization)
and Chief Engineer
(General) P.W.D., Chepauk,
Chennai-5

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order, dated 11.07.2011 in W.P.(MD).No.7639 of 2011, on the file of this Court.

Prayer in WP(MD). 7639/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a writ in the nature of Mandamus or direction directing the Ist respondent to consider the petitioners representation dated 24.01.2008 requesting the Respondents to appoint her on compassionate ground due to the death of her father M.Rajendran Office Assistance (Electrical) Madurai Division on 12.05.1999 while he was in service within a time limit by this Hon ble court.

For Appellant : Mr.S.M.A.Jinnah

For Respondents : Mr.V.R.Shanmuganathan
Spl. Govt. Pleader

J U D G M E N T

[Judgment of the Court by T.S.SIVAGNANAM, J.]

Heard Mr.S.M.A.Jinnah, learned counsel appearing for the appellant and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents and carefully perused the materials placed on record.



2. This writ appeal is directed against the order, dated 11.07.2011 made in W.P.(MD).No.7639 of 2011, by which the writ petition filed by the appellant for a direction upon the first respondent to consider her representation, dated 24.01.2008, for grant of appointment on compassionate ground was dismissed.

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3. The Writ Court has passed an elaborate order setting out the legal principles, which have been evolved by the Honourable Supreme Court in various decisions. The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the breadwinner. We have no quarrel over the said legal position and we are of the clear view that the right to be appointed on compassionate ground is not a vested right and it is not a right which will enure the benefits of the applicant endlessly. It is a well settled principle that the post cannot be kept vacant indefinitely so as to enable the legal heir of the deceased employee be appointed after attaining the age of majority. However, in the case on hand, we are constrained to take a slightly different view on account of the undisputed facts.

4. The appellant's father was working as an Office Assistant in the office of the second respondent Department and he died in harness on 12.05.1999 leaving behind the appellant / writ petitioner and her mother as legal heirs. The appellant / writ petitioner's mother submitted an application, on 31.08.1999, requesting for appointment on compassionate ground. This application was well within the time prescribed by the Government for submitting application for appointment on compassionate ground. The respondents have also not disputed the same. The further admitted fact being that the said application was not considered and no orders were passed till 2002 and it appears that due to her health condition, she gave a letter, dated 19.12.2002, requesting that the appellant / writ petitioner could be considered for appointment at a future date as at the relevant point of time, she was a minor. This application / request, dated 19.12.2002, was kept pending by the respondents and no orders were passed. In the meantime, on 10.04.2007, the appellant / writ petitioner attained majority and she submitted an application to grant compassionate appointment to her, vide application dated 24.01.2008. It is not in dispute that the said application has not been considered nor any orders have been passed and therefore, the appellant was compelled to file the writ petition. Only on 04.05.2011, the application / representation, dated 19.12.2002, submitted by the appellant / writ petitioner's mother was rejected. The reason for rejection being that the said application / representation, dated 19.12.2002, was submitted only after three years from the date of demise of the employee.

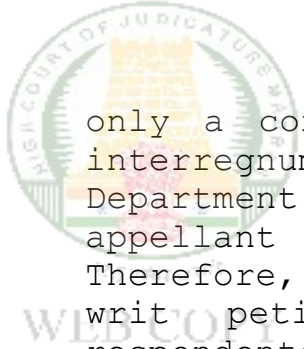


5. The learned Special Government Pleader appearing for the respondents submitted that the appellant / writ petitioner has not challenged the order, dated 04.05.2011. We are of the considered view that the appellant / writ petitioner may not required to challenge the same as it was an order passed on the request made by her mother. Therefore, on that technical ground, the appellant / writ petitioner cannot be non-suited. The most important fact to be noted is that from 2002 to 2011, the request made by the appellant / writ petitioner's mother was not even considered and it was rejected only on 04.05.2011. Even as on the said date, the application given by the appellant / writ petitioner was pending with the respondents. The order, dated 04.05.2011, does not state anything about the appellant / writ petitioner's application / representation. The respondents have not denied the fact that the appellant / writ petitioner's family is in indigent circumstance.

6. The learned counsel appearing for the appellant / writ petitioner submitted that on account of the ill-health of the appellant's mother, her family is suffering for all these years and her mother was in hope that her application / representation submitted during 1999 would be considered, but nothing happened till 2002 and due to her ill-health, she made a request that the appellant / her daughter may be given appointment at a future date. In the instant case, we find that the respondents have not explained as to why the application / representation submitted given by the appellant / writ petitioner's mother during 2002 was not disposed of till 2011. Thus, we are of the considered view that the appellant / writ petition is put into hardship on account of the fault committed by the Department.

7. The learned counsel appearing for the appellant / writ petitioner placed reliance upon the decision in ***Secy. to Govt. of T.N. v. C.Yatheeshvaran***, reported in ***2015-IV-LLJ-296 (Mad)***. The facts of the said case are somewhat identical to the case on hand and in the said case the application for compassionate appointment was rejected on the ground of delay. The Writ Court interfered with the said order of rejection, allowed the writ petition and rejected the writ appeal preferred by the Government. The Division Bench has also pointed out that the second application given by the respondent's mother in the said case was in continuation of with the earlier application. Therefore, the contention raised by the appellant / Government therein was rejected.

8. As noticed above, the first application for compassionate appointment for the wife of the deceased employee was given on 31.08.1999, it was well within the time and the application / representation, dated 19.12.2002 should be, thus, considered as



only a continuing request, since no orders were passed in the interregnum. Thus, on account of delay committed by the Department in taking timely action on the application, the appellant / writ petitioner has been put into great prejudice. Therefore, we are inclined to accept the case of the appellant / writ petitioner and issue appropriate directions to the respondents to consider her application / representation.

9. In the result, the writ appeal is allowed and the second respondent is directed to consider the appellant's application / representation, dated 24.01.2008, taking into consideration the facts placed above and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this Judgment. It is open to the second respondent to ascertain the financial status of the appellant / writ petitioner and her mother as on the date of consideration of her application / representation. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1.The Principal Secretary,
P.W.D.Secretariat,
Chennai-9.

2.The Engineer in Chief
(Water Resources Organization)
and Chief Engineer,
(General) P.W.D.,
Chepauk, Chennai-5.

+1 cc to Mr.S.M.A.Jinnah , Advocate in SR.No. 50448
+1 cc to Special Government Pleader in SR.No:50234

skm/krk

AE/SV/18.04.2017/4P/5C

W.A. (MD) No.859 of 2011
04.04.2017